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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ROHAN SHEPHERD, individually,
and on behalf of all others similarly
situated,

Plaintiffs,

VS.

LIFESTYLE DESIGN
INTERNATIONAL, LLC;
ULTIMATELAPTOPLIFESTYLE.CO
M,

Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR:

1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]

DEMAND FOR JURY TRIAL

1. ROHAN SHEPHERD (“Plaintiff”) bring this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Defendant LIFESTYLE DESIGN INTERNATIONAL, LLC and ULTIMATELAPTOPLIFESTYLE.COM (collectively referred to as “Defendants”), in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection

CLASS ACTION COMPLAINT

1 Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy.
2 Plaintiff alleges as follows upon personal knowledge as to itself and its own acts
3 and experiences, and, as to all other matters, upon information and belief, including
4 investigation conducted by its attorneys.

5 2. The TCPA was designed to prevent calls and messages like the ones
6 described within this complaint, and to protect the privacy of citizens like Plaintiff.
7 “Voluminous consumer complaints about abuses of telephone technology – for
8 example, computerized calls dispatched to private homes – prompted Congress to
9 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

10 3. In enacting the TCPA, Congress intended to give consumers a choice
11 as to how creditors and telemarketers may call them, and made specific findings
12 that “[t]echnologies that might allow consumers to avoid receiving such calls are
13 not universally available, are costly, are unlikely to be enforced, or place an
14 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this
15 end, Congress found that

16 [b]anning such automated or prerecorded telephone calls to the
17 home, except when the receiving party consents to receiving the
18 call or when such calls are necessary in an emergency situation
19 affecting the health and safety of the consumer, is the only
20 effective means of protecting telephone consumers from this
21 nuisance and privacy invasion.

22 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
23 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
24 purpose).

25 4. Congress also specifically found that “the evidence presented to the
26 Congress indicates that automated or prerecorded calls are a nuisance and an
27 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See also,
28 *Mims*, 132 S. Ct. at 744.

1 5. As Judge Easterbrook of the Seventh Circuit recently explained in a
2 TCPA case regarding calls to a non-debtor similar to this one:

3
4 The Telephone Consumer Protection Act ... is well known for its
5 provisions limiting junk-fax transmissions. A less-litigated part of the
6 Act curtails the use of automated dialers and prerecorded messages to
7 cell phones, whose subscribers often are billed by the minute as soon
8 as the call is answered—and routing a call to voicemail counts as
9 answering the call. An automated call to a landline phone can be an
annoyance; an automated call to a cell phone adds expense to
annoyance.

10 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

11 6. The Ninth Circuit recently affirmed certification of a TCPA class case
12 remarkably similar to this one in *Meyer v. Portfolio Recovery Associates, LLC*, __
13 F.3d __, 2012 WL 4840814 (9th Cir. Oct. 12, 2012).

14 **Jurisdiction and Venue**

15 7. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
16 a resident of California, seeks relief on behalf of a Class, which will result in at least
17 one class member belonging to a different state than that of Defendants, individuals
18 residing and doing business in Utah. Plaintiff also seeks \$1,500.00 in damages for
19 each call in violation of the TCPA, which, when aggregated among a proposed class
20 in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
21 Therefore, both diversity jurisdiction and the damages threshold under the Class
22 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

23 8. Venue is proper in the United States District Court for the Northern
24 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendants do
25 business within the State of California and Plaintiff resides within the County of
26 San Francisco.

27 ///

28 ///

PARTIES

9. Plaintiff ROHAN SHEPHERD is an individual living in San Francisco County, California, and is a “person” as defined by 47 U.S.C. § 153 (39).

10. Defendant LIFESTYLE DESIGN INTERNATIONAL, LLC (hereinafter “LDIL”), provides training and coaching to entrepreneurs, and is a “person” as defined by 47 U.S.C. § 153 (39).

11. Defendant ULTIMATELAPTOPLIFESTYLE.COM (hereinafter “ULTIMATELAPTOPLIFESTYLE”), is a work from home website for entrepreneurs, and is a “person” as defined by 47 U.S.C. § 153 (39).

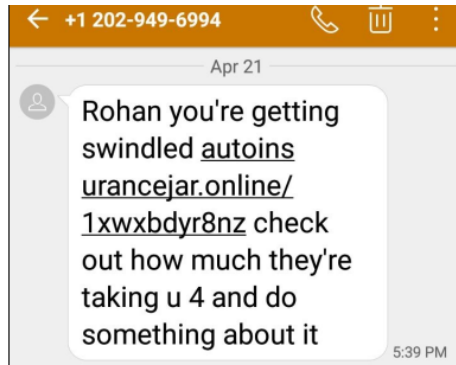
12. Plaintiff believes, and thereupon alleges, that Defendants LDIL and ULTIMATELAPTOPLIFESTYLE were acting for the mutual benefit of one another and in concert at all times relevant herein, and will therefore be referred to hereinafter and collectively as “Defendants”.

Factual Allegations

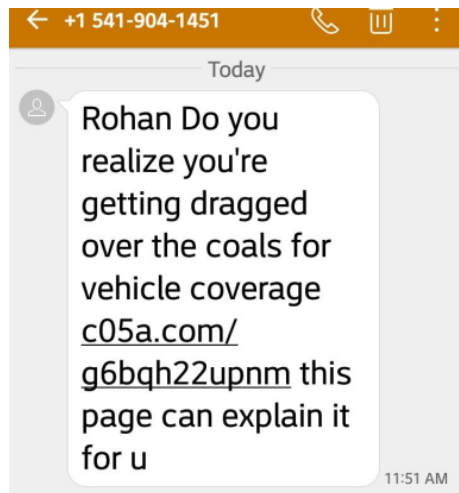
13. On or about April of 2020, Plaintiff received a series of unsolicited text messages from Defendants on Plaintiff’s cellular telephone number ending in -1174 in an attempt to solicit Plaintiff to purchase Defendants’ services.

14. During this time, Defendants began to use Plaintiff’s cellular telephone for the purpose of sending Plaintiff spam advertisements and solicitation offers via text messages, including a text message sent to and received by Plaintiff on or about April 21, 2020, from Defendants.

15. On April 21, 2020, Plaintiff received a text message from Defendants. It read:



16. Not long after, on February 16, 2019, Plaintiff received another text message from Defendants. It read:



17. Thereafter, Plaintiff continued receiving multiple unsolicited text messages from Defendants, including on May 14, 2020, May 18, 2020, and June 5, 2020.

18. The text messages placed to Plaintiff's cellular telephone were placed via Defendants' *SMS Blasting Platform*, i.e., an "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

19. The telephone number that Defendants, or their agent, called was assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

20. These telephone calls constituted calls that were not for emergency

1 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

2 21. Plaintiff was never a customer of Defendants' and never provided his
3 cellular telephone number Defendants for any reason whatsoever. Accordingly,
4 Defendants and their agent never received Plaintiff's prior express consent to
5 receive unsolicited text messages, pursuant to 47 U.S.C. § 227 (b)(1)(A).

6 22. These telephone calls by Defendants, or its agents, violated 47 U.S.C.
7 § 227(b)(1).

8 **CLASS ALLEGATIONS**

9 23. Plaintiff brings this action on behalf of himself and on behalf of and
10 all others similarly situated ("the Class").

11 24. Plaintiff represents, and is a member of, the Class, defined as follows:

12 All persons within the United States who received any
13 unsolicited calls or text messages from Defendants which
14 were not made for emergency proposes or with the
15 recipient's prior express consent within the four years
16 prior to the filing of this Complaint

17 25. Defendants and their employees or agents are excluded from the Class.
18 Plaintiff does not know the number of members in the Class but believes the Class
19 members number in the hundreds of thousands, if not more. Thus, this matter
20 should be certified as a Class action to assist in the expeditious litigation of this
21 matter.

22 26. Plaintiff and members of the Class were harmed by the acts of
23 Defendants in at least the following ways: Defendants, either directly or through
24 their agents, illegally contacted Plaintiff and the Class members via their cellular
25 telephones by using marketing and text messages, thereby causing Plaintiff and the
26 Class members to incur certain cellular telephone charges or reduce cellular
27 telephone time for which Plaintiff and the Class members previously paid, and
28 invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class

1 members were damaged thereby.

2 27. This suit seeks only damages and injunctive relief for recovery of
3 economic injury on behalf of the Class, and it expressly is not intended to request
4 any recovery for personal injury and claims related thereto. Plaintiff reserves the
5 right to expand the Class definition to seek recovery on behalf of additional persons
6 as warranted as facts are learned in further investigation and discovery.

7 28. The joinder of the Class members is impractical and the disposition of
8 their claims in the Class action will provide substantial benefits both to the parties
9 and to the court. The Class can be identified through Defendants' records or
10 Defendants' agent's records.

11 29. There is a well-defined community of interest in the questions of law
12 and fact involved affecting the parties to be represented. The questions of law and
13 fact to the Class predominate over questions which may affect individual Class
14 members, including the following:

- 15 a. Whether, within the four years prior to the filing of this
16 Complaint, Defendants or their agents called and/or sent any
17 text messages to the Class (other than a message made for
18 emergency purposes or made with the prior express consent of
19 the called party) to a Class member using any automatic dialing
20 system to any telephone number assigned to a cellular phone
21 service;
- 22 b. Whether Plaintiff and the Class members were damaged
23 thereby, and the extent of damages for such violation; and
- 24 c. Whether Defendants and their agents should be enjoined from
25 engaging in such conduct in the future.

26 30. As a person that received at least one marketing call and text message
27 without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical
28 of the Class. Plaintiff will fairly and adequately represent and protect the interests

1 of the Class in that Plaintiff has no interests antagonistic to any member of the Class.

2 31. Plaintiff and the members of the Class have all suffered irreparable
3 harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class
4 action, the Class will continue to face the potential for irreparable harm. In addition,
5 these violations of law will be allowed to proceed without remedy and Defendants
6 will likely continue such illegal conduct. Because of the size of the individual Class
7 member's claims, few, if any, Class members could afford to seek legal redress for
8 the wrongs complained of herein.

9 32. Plaintiff has retained counsel experienced in handling class action
10 claims and claims involving violations of the Telephone Consumer Protection Act.

11 33. A class action is a superior method for the fair and efficient
12 adjudication of this controversy. Class-wide damages are essential to induce
13 Defendants to comply with federal and California law. The interest of Class
14 members in individually controlling the prosecution of separate claims against
15 Defendants are small because the maximum statutory damages in an individual
16 action for violation of privacy are minimal. Management of these claims is likely
17 to present significantly fewer difficulties than those presented in many class claims.

18 34. Defendants has acted on grounds generally applicable to the Class,
19 thereby making appropriate final injunctive relief and corresponding declaratory
20 relief with respect to the Class as a whole.

21 **FIRST CAUSE OF ACTION**

22 **Negligent Violations of the Telephone Consumer Protection Act**

23 **47 U.S.C. §227(b).**

24 35. Plaintiffs repeat and incorporates by reference into this cause of action
25 the allegations set forth above.

26 36. The foregoing acts and omissions of Defendant constitute numerous
27 and multiple negligent violations of the TCPA, including but not limited to each
28 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular

1 47 U.S.C. § 227 (b)(1)(A).

2 37. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b),
3 Plaintiffs and the Class Members are entitled an award of \$500.00 in statutory
4 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

5 38. Plaintiffs and the Class members are also entitled to and seek
6 injunctive relief prohibiting such conduct in the future.

7 **SECOND CAUSE OF ACTION**

8 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
9 **Act**

10 **47 U.S.C. §227(b)**

11 39. Plaintiffs repeat and incorporates by reference into this cause of action
12 the allegations set forth above.

13 40. The foregoing acts and omissions of Defendant constitute numerous
14 and multiple knowing and/or willful violations of the TCPA, including but not
15 limited to each and every one of the above cited provisions of 47 U.S.C. § 227(b),
16 and in particular 47 U.S.C. § 227 (b)(1)(A).

17 41. As a result of Defendant's knowing and/or willful violations of 47
18 U.S.C. § 227(b), Plaintiffs and the Class members are entitled an award of
19 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
20 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

21 42. Plaintiffs and the Class members are also entitled to and seek
22 injunctive relief prohibiting such conduct in the future.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs request judgment against Defendants for the following:

- 25 a. That this action be certified as a class action on behalf of The
26 Classes and Plaintiff be appointed as the representative of The
27 Classes;
28 b. As a result of Defendant's negligent violations of 47 U.S.C.

1 §227(b)(1), Plaintiff and the Class members are entitled to and
2 request \$500 in statutory damages, for each and every violation,
3 pursuant to 47 U.S.C. 227(b)(3)(B);

- 4 c. As a result of Defendant's willful and/or knowing violations of
5 47 U.S.C. §227(b)(1), Plaintiff and the Class members are
6 entitled to and request treble damages, as provided by statute,
7 up to \$1,500, for each and every violation, pursuant to 47
8 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C);
9 d. For actual damages according to proof;
10 e. For reasonable attorneys' fees and costs of suit;
11 f. For prejudgment interest at the legal rate; and,
12 g. Any and all other relief that the Court deems just and proper.

13 **JURY DEMAND**

14 43. Pursuant to the Seventh Amendment to the Constitution of the United
15 States of America, Plaintiffs are entitled to, and demands, a trial by jury.

16 Respectfully submitted this 2nd day of October, 2020.

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18 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

19
20 By: /s/ Todd M. Friedman
21 Todd M. Friedman
22 Law Offices of Todd M. Friedman
23 Attorney for Plaintiffs
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